

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,) No. 3:17-cv-05760 BHS
)

Plaintiff,)

vs.)

KEVIN SYKES-BONNETT, JOHN)
MARTINSON and SYKED ECU TUNING)
INCORPORATED, a Washington)
corporation,)

Defendants.)

**) REPLY ON MOTION TO QUASH
) PLAINTIFFS' SUBPOENA ISSUED TO
) THIRD PARTY VERIZON
) COMMUNICATIONS INC.**

Defendants Kevin Sykes-Bonnett, John Martinson, and Syked ECU Tuning, Inc. (collectively "Syked Tuning") hereby submit this Reply to the Opposition (Dkt. 58) filed by Plaintiff HP Tuners, LLC ("HP Tuners") against Syked Tuning's Motion to Quash Plaintiff's Subpoena Issued to Third Party Verizon Communications Inc. (Dkt. 54).

I. SUMMARY OF THE ARGUMENT

Throughout its opposition to Syked Tuning's Motion to Quash, HP Tuners alleges that it is not engaged in a fishing expedition and that its subpoena is narrowly tailored to obtain relevant information. HP Tuners' opposition demonstrates, however, just the opposite: that its subpoena is just a fishing expedition for "the potential existence of phone calls." In fact, HP Tuners does

not deny that it recently filed a complaint in the Northern District of Illinois alleging very similar allegations as those against Syked Tuning, and affirmatively admitting that it has no idea who committed these actions. Further, HP Tuners fails to meritoriously address Syked Tuning's trade secret concerns—a tacit admission that this is really the information HP Tuners is seeking through this subpoena. Finally, HP Tuners fails to show any actual connection between the information that it seeks from Verizon and its allegations against Syked Tuning.

II. ARGUMENT

A. **HP Tuners' Subpoena Will Reveal Syked Tuning's Valuable Trade Secret Information**

The primary reason that Syked Tuning's Motion to Quash should be granted is because Verizon's compliance with HP Tuners' subpoena will reveal valuable trade secret and confidential information. In its opposition, HP Tuners asserts that it only seeks non-content information and that this information "hardly constitutes a 'trade secret.'" But as Syked Tuning demonstrated in its Motion, the phone numbers, i.e., non-content information that HP Tuners seeks, is the trade secret information in this case, which courts have an obligation to protect. *See In re eBay Seller Antitrust Litigation*, 2009 WL 10677051, at *4 (W.D. Wash. Aug. 17, 2009). This obligation is heightened when compliance with the subpoena would put a party's confidential information directly in the hands of a competitor, giving that competitor an unfair competitive edge. *See Daimler Truck North America LLC v. Younessi*, 2008 WL 2519845, at *2 (W.D. Wash. June 20, 2008).

As Syked Tuning demonstrated in its Motion, its contacts provide confidential information, which allows it to run its business and compete with HP Tuners in the marketplace. Even disclosing the phone numbers of Syked Tuning's contacts would reveal the contacts' identity, which would in turn (1) cause Syked Tuning irreparable harm in the market, (2)

1 jeopardize Syked Tuning's business, and (3) potentially endanger those contacts if their
2 affiliation with Syked Tuning were to become known. HP Tuners is well aware that the non-
3 content information it seeks constitutes Syked Tuning's trade secret information. The fact that
4 it makes false, misleading statements to the contrary and fails to address Syked Tuning's
5 argument is a tacit admission by HP Tuners that Syked Tuning's trade secret information is
6 exactly what it is after.
7

8 Further, HP Tuners has not demonstrated a substantial need for this information that is
9 sufficient to overcome the harm to Syked Tuning. In its opposition, the only substantial need HP
10 Tuners mentions is learning the identities of other individuals with whom Syked Tuning has
11 communicated. HP Tuners, however, has demonstrated that it has gathered this information and
12 can gather additional information through less obtrusive means that do not reveal Syked Tuning's
13 trade secrets. In fact, HP Tuners states in its opposition that it "recently acquired additional,
14 detailed information indicating Sykes-Bonnett distributed HP Tuners credits unlawfully," that it
15 knows the identity of the alleged co-defendant, Alvaro Valencia, and that it knows the identity
16 of a silent partner working with Syked Tuning. Dkt. 58 at 3-4. HP Tuners also touts its detailed
17 allegations against Syked Tuning in its Amended Complaint. Accordingly, HP Tuners alleges to
18 have already gathered far more information than a few phone numbers could ever reveal.
19

20 **B. HP Tuners Fails to Demonstrate Any Connection between its Subpoena and Any**
21 **Allegations in this Case**

22 Throughout its opposition, HP Tuners fails to demonstrate any connection between the
23 information requested in its subpoena and its allegations against Syked Tuning. As stated
24 above, the need that HP Tuners mentions is learning the identities of other individuals involved
25 in Syked Tuning's alleged scheme. HP Tuners does not provide any meaningful connection
26 beyond this statement. Instead, HP Tuners demonstrates that it has already gathered and can
27

1 continue to gather any relevant information it needs through less harmful discovery
2 mechanisms. Discovery in this matter is ongoing and HP Tuners has demonstrated that any
3 communications between *relevant* third parties and Syked Tuning can be discovered through
4 these traditional mechanisms—not through an overly broad subpoena that will reveal Syked
5 Tuning’s trade secrets. For example, in its motion HP Tuners demonstrated its ability to
6 acquire “detailed information” concerning the exact communications covered by its subpoena.
7 Verizon, therefore, should not be required to comply with HP Tuners’ subpoena in furtherance
8 of its fishing expedition when it touts the ability to acquire the same information through less
9 harmful means.
10

11 **C. HP Tuners’ Analogy to Syked Tuning’s Subpoena is Meritless**

12 Finally, in a last-ditch effort to provide legitimacy to its subpoena, HP Tuners states,
13 falsely, that its subpoena is narrowly tailored similar to Syked Tuning’s subpoena for Keith
14 Prociuk’s Google Voice number. HP Tuners’ comparison is demonstrably false for several
15 reasons:
16

- 17 • HP Tuners failed even to demonstrate that it had standing to quash Syked Tuning’s
18 subpoena served on Google. There is no doubt that Syked Tuning has standing to bring
19 this motion.
20
- 21 • Syked Tuning’s subpoena was limited to a period of *months*, whereas HP Tuners’
22 subpoena spans a period of *years*.
23
- 24 • Syked Tuning alleged that Mr. Prociuk and Tim Milliken engaged in specific
25 conversations related to hacking and stealing Syked Tuning’s source code and
26 proprietary information. Syked Tuning’s subpoena requested information that was
27 directly connected to that allegation. Conversely, HP Tuners fails to make any

1 connection between the information requested in its subpoena and its allegations against
2 Syked Tuning.

- 3 • Syked Tuning's subpoena did not require the disclosure of HP Tuners' trade secrets, nor
4 did HP Tuners allege any such harm. HP Tuners' subpoena, however, would
5 irreparable harm Syked Tuning by requiring it to disclose its trade secrets to a direct
6 competitor.
7

8 For at least these reasons, Syked Tuning's subpoena is in no way comparable to the
9 subpoena at issue, and this Court has not previously permitted a similar subpoena to issue.

10 **III. CONCLUSION**

11 HP Tuners' subpoena is overly broad and would require third party Verizon Wireless to
12 disclose Syked Tuning's trade secrets and confidential information directly to a competitor—
13 something that would irreparably harm Syked Tuning in the marketplace. Because HP Tuners
14 has not demonstrated a substantial need for the information requested in its subpoena, its
15 subpoena should be quashed.
16

17 DATED: August 3, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

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